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SECRETARY OF STATE

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:

JEFF HARRIS

RESPONDENT

)
) DIVISION OF WATER
) POLLUTION CONTROL
)
) Docket No. 04.30-099133A
)
) CASE NO. 07-016D
) WPC07-0016
)

AGREED ORDER

This matter came to be heard before the Tennessee Water Quality Control Board upon the Director's Order and Assessment and the Respondent's Petition for Review. The Board, a quorum present, hereby adopts the following Findings of Fact and Conclusions of Law and Order and Assessments to which the parties have agreed, as evidence by the signatures of the parties below.

FINDINGS OF FACT

I.

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the "Division") by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "Department").

II.

Jeff Harris, (hereinafter the "Respondent") is a resident of the State of Tennessee, and is the owner of On Higher Ground, a residential subdivision development, located in Sevier

County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent at 3039 Shaconage Trail, Sevierville, Tennessee 37876.

III.

Whenever the Commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 *et seq.*, the *Water Quality Control Act*, (hereinafter the "Act") has occurred, or is about to occur, the Commissioner may issue a complaint to the violator and may order that corrective action be taken, pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the Commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department Rules governing general water quality criteria and use classifications for surface waters have been promulgated, pursuant to T.C.A. § 69-3-105, and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rules"). Pursuant to T.C.A. § 69-3-107(13), the Commissioner may delegate to the Director of the Division of Water Pollution Control any of the powers, duties, and responsibilities of the Commissioner under the Act.

IV.

The Respondent is a "person" as defined at T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

An unnamed tributary to Little Cove Creek and an unnamed wetland are "waters of the state," as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses.

In accordance with Department Rule 1200-4-4, "Use Classifications for Surface Waters," these water bodies have been classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

VI.

T.C.A. § 69-3-108 requires a person to obtain coverage under a permit from the Department prior to discharging any substance to waters of the state, or to a location from which it is likely that the discharged substance will move into waters. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the "TNCGP") may be obtained by submittal of a complete and accurate Notice of Intent (NOI).

VII.

T.C.A. § 69-3-108 requires a person to obtain coverage under a permit from the Department prior to the alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state. Pursuant to T.C.A. § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss.

VIII.

On September 16, 2003, Division personnel investigated a complaint stating that construction activities at the site were causing soil to enter into a tributary to Little Cove Creek. Division personnel observed that construction activities had disturbed approximately five acres of land. An access road had been constructed from Little Cove Church Road up a hillside with

construction activities underway along the road. Inadequate erosion prevention and sediment control measures (EPSC) had allowed eroded soil to migrate off site and into an unnamed tributary to Little Cove Creek. A file review determined that the Respondent had neither applied for nor obtained coverage under the TNCGP for these activities.

IX.

On September 18, 2003, the Division issued a Notice of Violation (NOV) to the Respondent describing the violations observed during the September 16, 2003 site inspection. The NOV instructed the Respondent to immediately provide temporary cover for the exposed soils on site. Additionally, the NOV instructed the Respondent to submit a NOI and a Storm Water Pollution Prevention Plan (SWPPP) within 14 days of receipt of the NOV, in order to obtain coverage under the TNCGP.

X.

On August 22, 2005, Division personnel conducted a hydrologic determination of a watercourse at the site. This watercourse was determined to be a stream. Division personnel notified the Respondent of these findings on August 30, 2005.

XI.

On October 21, 2005, the Division received a NOI from the Respondent requesting TNCGP coverage be issued for construction activities at the site.

XII.

On December 22, 2005, the Division issued a NOC under the TNCGP for construction activities at the site.

XIII.

On January 6, 2006, the Respondent submitted an ARAP application requesting authorization under the General Permit for Construction and Removal of Minor Road Crossings (hereinafter the "ARAP GP for Minor Road Crossings") to construct a minor road crossing over an unnamed tributary to Little Cove Creek. The Division issued written authorization for this activity on February 1, 2006.

XIV.

On February 14, 2006, Division personnel conducted a site investigation and observed that improperly installed and inadequate EPSC measures at the minor road crossing and throughout the site were allowing disturbed soils to migrate into the unnamed tributary to Little Cove Creek. Division personnel also noted that the minor road crossing, authorized on February 1, 2006, had been constructed.

XV.

On May 11, 2006, Division personnel conducted a follow-up inspection of the site and observed that inadequate EPSC measures throughout the site were allowing disturbed soils to migrate into the unnamed tributary to Little Cove Creek. EPSC inspection reports were not available on site as required by the TNCGP.

XVI.

On May 25, 2006, the Division issued a second NOV to the Respondent for violations observed during the inspection of February 14, 2006, and May 11, 2006. The NOV instructed the Respondent and the site contractors to attend a compliance review meeting at the Knoxville Environmental Field Office (K-EFO) on June 7, 2006. The NOV additionally instructed the Respondent to immediately implement appropriate Best Management Practices (BMPs) in order to comply with the requirements of the TNCGP and the ARAP GP for Minor Road Crossings.

The NOV further instructed the Respondent to develop a Corrective Action Plan (CAP) to address the removal of sediment deposited in the unnamed tributary to Little Cove Creek, stream bank stabilization and the overall site stabilization measures. The CAP was to be submitted within 30 days of receipt of the NOV, and the measures therein were to be completed within 30 days of receiving written approval from the Division. Documentation of completion of these measures was to be submitted to the Division within 60 days of completion.

XVII.

During the June 7, 2006 compliance review meeting, the Respondent submitted an updated storm water management plan to the Division. This plan included recent photographs of the site taken by the Respondent, showing BMPs implemented in response to the NOV of May 25, 2006. Also included were copies of EPSC inspection reports for the period of January through March 2006. During this meeting, the Respondent was instructed to attend the Fundamentals of Erosion Prevention and Sediment Control Workshop (Level I) and submit a copy of the certificate of completion by October 2006.

XVIII.

On June 29, 2006, Vision Engineering and Development Services submitted a CAP to the Division on behalf of the Respondent.

XIX.

On July 18, 2006, the Division completed the review of the CAP and determined it to be deficient in several areas. The Respondent was notified of these deficiencies and was provided guidance to correct the identified deficiencies on this date.

XX.

On August 14, 2006, the Respondent acknowledged receipt of the deficiency letter and stated that the Division's recommendations would be implemented and that an updated site plan would be submitted within 5 days.

XXI.

On August 24, 2006, Division personnel conducted a follow-up site inspection to determine progress in meeting the requirements discussed in the compliance review meeting of June 7, 2006. Division personnel observed that efforts had been made to stabilize the site and install appropriate EPSC measures, however, maintenance of the EPSC measures had not been conducted in a timely fashion.

XXII.

On August 30, 2006, the Division issued a third NOV to the Respondent for the violations observed on August 24, 2006. This NOV contained specific instructions for the Respondent to address the violations observed on August 24, 2006.

XXIII.

On October 23, 2006, the Respondent submitted photographic and written documentation of stream sediment removal activities conducted on the site. The photographs consisted of 'before and after' shots at the same locations. Division personnel judged this submittal to be of little value in documenting the extent of stream sediment removal activities.

XXIV.

On December 18, 2006, Division personnel conducted a follow-up site visit to determine compliance with the TNCGP, ARAP, and the requirements of previously issued NOVs. Division personnel observed inadequate EPSC measures at numerous locations as well as additional sediment deposits in the unnamed tributary downstream of the sediment basin identified in the

June 7, 2006, storm water management plan. The most recent EPSC inspection report available was from October 2006.

XXV.

On December 20, 2006, the Division issued a fourth NOV to the Respondent for the violations observed on December 18, 2006. This NOV instructed the Respondent to stabilize all areas of the site where work is complete or has temporarily ceased, implement the required EPSC monitoring and amend the site SWPPP.

XXVI.

On May 18, 2007, Division personnel met the Respondent at the site and noted that the EPSC measures in place had not been maintained and numerous areas of the site were still bare and unstable. Continuing sediment deposition into the unnamed tributary to Little Cove Creek was noted.

XXVII.

On June 4, 2007, the Department issued a Director's Order and Assessment, No. 07-016D to Respondents for violations of the Tennessee Water Quality Control Act. The Director's Order and Assessment set forth certain requirements and correction action measures related to the Respondents' violations of the Act.

XXVIII.

On June 21, 2007, the Division met with Respondent to discuss compliance with the Director's Order and Assessment. At that meeting, it was determined that the temporary road crossing located on the unnamed tributary to Little Cove Creek, as referenced in the Director's Order and Assessment was not located on Respondent's property, and had been in place since before the commencement of Respondent's construction activities.

XXVIX.

On June 21, 2007, the Division received a letter from Respondent, dated June 20, 2007. In response to and in partial satisfaction of Item #1, page 10 of the Director's Order and Assessment, the Respondent's letter documented that erosion prevention and sediment control measures had been installed to ensure that no additional material would leave the site and enter waters of the state.

XXX.

On July 8, 2007, the Division received a letter from Respondent, dated July 3, 2007. In response to and in satisfaction of Item #2, page 11 of the Director's Order and Assessment, the Respondent's letter included a revised CAP detailing the manual methods to be utilized to remove accumulated sediment from the unnamed tributary to Little Cove Creek. In response to and in satisfaction of Item #5, page 11 of the Director's Order and Assessment, Respondent also submitted documentation that Respondent and his excavator attended and successfully completed a Fundamentals of Erosion and Sediment Control Workshop (Level I).

XXXI.

On July 16, 2007, the Division sent written approval of Respondent's revised CAP.

XXXII.

On August 17, 2007, the Division received documentation showing that all actions outlined in the revised CAP had been completed, in satisfaction of Item #3, page 11 of the Director's Order and Assessment.

XXXIII.

During the course of investigating this matter, the Division incurred DAMAGES in the amount of SEVEN HUNDRED SEVENTY ONE DOLLARS AND SEVENTEEN CENTS (\$771.17).

XXXIV.

On April 17, 2008 the Division received a letter from Respondent, dated April 15, 2008, along with a check (#1380, Mountain Cabin Builders Business Account) signed by Respondent for SEVEN HUNDRED SEVENTY ONE DOLLARS AND SEVENTEEN CENTS (\$771.17), the total amount of the DAMAGES owed to the Division.

CONCLUSIONS OF LAW

XXXIV.

By conducting activities without coverage under a permit, the Respondent has violated T.C.A. §§ 69-3-108(a) and 69-3-114(b) which state in part:

T.C.A. § 69-3-108(a) states:

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

T.C.A. § 69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.

XXXV.

By failing to conduct EPSC inspections, maintain reports of EPSC inspections and failing to update the SWPPP as required by the TNCGP, the Respondent has violated T.C.A. § 69-3-114(b) as referenced above.

XXXVI.

By violating the terms of the ARAP GP for Minor Road Crossings, the Respondent has violated T.C.A. § 69-3-114(b) as referenced above.

XXXVII.

By failing to properly install and maintain EPSC measures at a land disturbance activity, the activity described herein did or was likely to cause an increase in the discharge of wastes into the waters of the state. Therefore, the Respondent has violated T.C.A. § 69-3-114(b) as referenced above and T.C.A. § 69-3-108(b) which states in part;

T.C.A. § 69-3-108(b) states:

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (3) The increase in volume or strength of any wastes in excess of the permissive discharges specified under any existing permit;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise later the physical, chemical, radiological,

biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

(5) The construction or use of any new outlet for the discharge of any wastes into the waters of the state;

(6) The discharge of sewage, industrial wastes, or other wastes into water, or a location from which it is likely that the discharged substances will move into waters;

XXXVIII.

By causing a condition of pollution, the Respondents have violated T.C.A. § 69-3-108(b) as referenced above.

ORDER AND ASSESSMENT

XXXIV.

WHEREFORE, PREMISES CONSIDERED, it is hereby ORDERED by the Water Quality Control Board as follows:

1. The Respondent shall establish and maintain effective EPSC measures onsite to ensure that sediment is not allowed to leave the site or enter waters of the state. These EPSC measures shall be maintained until such time as all land disturbance at the site is complete and erosion-preventive permanent cover is established.
2. The Respondent shall pay a CIVIL PENALTY of SEVEN THOUSAND SIX HUNDRED DOLLARS (\$7,600) to the Division, hereby ASSESSED to be paid as follows:
 - i. The Respondent shall pay a CIVIL PENALTY in the amount of THREE THOUSAND SIX HUNDRED DOLLARS (\$3,600.00) to the Division of Water

Pollution control, Enforcement & Compliance Section, located at, 401 Church Street, L&C Annex 6th Floor, Nashville, TN 37243-1534. The CIVIL PENALTY shall be paid to the Department in four (4) installments. The first installment of THREE HUNDRED DOLLARS (\$300.00) is due and payable within three (3) months of this ORDER AND ASSESSMENT becoming final. The second installment of THREE HUNDRED DOLLARS (\$300.00) is due and payable within six (6) months of this ORDER AND ASSESSMENT becoming final. The third installment of THREE HUNDRED DOLLARS (\$300.00) is due and payable within nine (9) months of this ORDER AND ASSESSMENT becoming final. The last installment and balance of the CIVIL PENALTY, in the amount of TWO THOUSAND SEVEN HUNDRED DOLLARS (\$2,700.00) is due and payable within twelve (12) months of this ORDER AND ASSESSMENT becoming final. Should any of the payment days of any such month be a Saturday, Sunday or legal holiday, the payment will be due on the next business day following such day. Should the Respondent fail to timely submit any payment when due, the entire remaining unpaid balance shall become due and payable within 30 days of default.

- ii. If and only if, the Respondent fails to comply with item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of FOUR THOUSAND DOLLARS (\$4,000), payable within 30 days of default.
3. The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order. In order to be eligible for this time extension, the Respondents shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension shall be in writing. Should the Respondents fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

REASONS FOR DECISIONS

XXXV.

The Board approves this Agreed Order because it is a fair and reasonable settlement of the matter. The Board also approves of settlements in that they conserve the resources of the Department and the Board.

RIGHTS OF APPEAL

XXXVI.

The Respondents are hereby notified and advised of the right to administrative and judicial review of this FINAL DECISION AND ORDER pursuant to the Tennessee Uniform Administrative Procedures Act, T.C.A. §§ 4-5-316, 4-5-317 and 4-5-322 and the Water Quality Control Act, T.C.A. §§ 69-3-111 and 69-3-115.

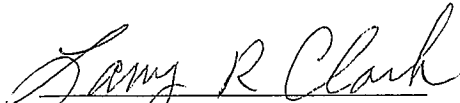
T.C.A. § 4-5-316 gives a party the right to submit to the Board a Petition for Stay of Effectiveness of a Final Order within seven (7) days after its entry. T.C.A. § 4-5-317 gives any party the right to file a Petition for Reconsideration within ten (10) days after the entry of a Final Order, stating specific grounds upon which relief is requested.

T.C.A. §§ 4-5-322 and 69-3-111 provide the right of judicial review by filing a Petition in the Chancery Court of Davidson County within sixty (60) days of entry of this Order.

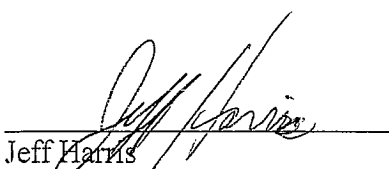
This **AGREED ORDER** will become final upon entry in the Administrative Procedures Division (APD) of the Secretary of State's Office. A copy of the final **AGREED ORDER**, showing the filing date with the APD, shall be served upon the Respondent by certified mail, return receipt requested.

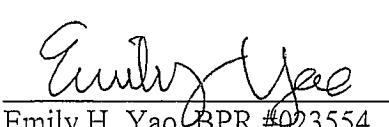
THIS FINAL DECISION AND ORDER SHALL BECOME EFFECTIVE UPON ENTRY.

FOR THE TENNESSEE WATER QUALITY CONTROL BOARD:



Chairperson

By entering into this Agreed Order, the Respondent knowingly and voluntarily waives its rights to appeal, as described in the **RIGHTS OF APPEAL** section above.


Jeff Harris
Respondent


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(615) 532-0131

ENTERED in the Office of the Secretary of State, Administrative Procedures Division,
this 17th day of June, 2008.


Thomas G. Stovall, Director
Administrative Procedures Division